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IBM CORP. (WIP)			EXAMINER	
c/o WALDER INTELLECTUAL PROPERTY LAW, P.C.			AL HASHEMI, SANA A	
17330 PRESTON ROAD				
SUITE 100B			ART UNIT	
DALLAS, TX 75252			PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/537,213

Applicant(s)

HINDLE, GUY PATRICK

Examiner

Sana Al-Hashemi

Art Unit

2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) 16-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is issued in response to amendment filed 5/19/08

Claims 1-5 were amended, Claims 6-15 were canceled, Claims 16-22 were added.

Claims 1-5 are pending. Claims 16-22 were withdrawn from consideration.

Election/Restrictions

Newly submitted claims 16-22 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claimed invention in claims 16-22 is directed to a user requesting a data synchronization which is distinct from the originally claimed invention in claims 1-5 which is directed to legacy and non legacy computers communicating among each other.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16-22 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, and 5 recites the limitation “executing, by said first non-legacy computer, said at least one operation on said master data at said at least one legacy computer”. It is unclear to

the examiner if the master version is stored on the legacy computer how would the non-legacy computer execute an operation, since the body of the claims does not clearly show how the legacy and non-legacy computer(s) communicate. Appropriate clarification is required.

Claim 3 recites the phrase “at least one operation comprises two or more operation” renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(b). It is unclear to the examiner how the one operation may contain two or more operations. Clarification is required.

Claim 4, recites the phrase “ending by said first non-legacy computer, the results from said executing said at least one operation on said master version step and new copy of the master version of data” renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(b), it is unclear to the examiner how the first non-legacy computer and not the non-legacy computer, second what are the result of the execution would be, where the new copy along with the master would be stored and if there is a new copy would the new copy be identical of the master version or different, the same what is the need for the new copy and if it is different would the new copy be some thing other than the master version. Clarification is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gehman et al. (Gehman hereinafter) US Patent No. 7,136,881 filed Dec. 15, 2000 in view of Grimsrud US Patent No. 6,546,437 filed March 18, 1999.

Regarding Claim 1, Gehman discloses a method of synchronizing data in a distributed data processing system comprising the steps of:

storing a master data in at least one legacy computer system (Fig. 2, step 40, event master werver, Col. 2, lines 6, Gehman);

enabling a first non-legacy computer to support synchronization (Col. 2, line 48, client server, Gehman);

storing a copy of the master data in a second non-legacy computer (Col. 2, lines 51-52, Gehman);

executing, by said second non-legacy computer, at least one operation on said copy of the master data (Col. 3, lines 44-46, Gehman);

sending, by said second non-legacy computer, said at least one operation to said first non-legacy computer (Col. 3, lines 46-53, Gehman);

executing, by said first non-legacy computer, said at least one operation on said master data at said at least one legacy computer (Col. 3, lines 59-64, Gehman);

determining whether the first non-legacy computer successfully executed the at least one operation (Fig. 3B, step 96, wherein the optional of yes when successful and no if not, Gehman);

and

in response to a determination that the first non-legacy computer successfully executed the at least one operation, synchronizing said master data by applying said at least one operation

(Fig. 3B, step 98, Gehman). As stated above the Gehman reference discloses all the limitations. However, the Gehman is silent with respect the computers being a non-legacy or legacy computers. On the other hand, Grimsrud discloses the use of both legacy and non-legacy computers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the legacy and non-legacy computer in the Gehman system. Skilled artisan would have been motivated to do so in order to detect any changes or any hardware connected to the system as taught in Col. 3, lines 7-20, and Col. 8, lines 33-51, Grimsrud).

Regarding Claim 2, the combination of Gehman in view of Grimsrud discloses a method further comprising the step of sending, by the second non-legacy computer, a synchronization protocol to the first non- legacy computer (Col. 3, lines 1-6, Gehman).

Regarding Claim 3, the combination of Gehman in view of Grimsrud discloses a method wherein said at least one operation further comprises at least two operations which are executed by said first non-legacy computer sequentially (Col. 4, lines 20-26, Gehman).

Regarding Claim 4, the combination of Gehman in view of Grimsrud discloses a method wherein the executing, by said first non-legacy computer further comprises:

sending by said first non-legacy computer the results from said at least one operation, to said second non-legacy computer (Col. 5, lines 14-18, Gehman); and

sending by said first non-legacy computer a new copy of the master data, to said second non-legacy computer (Col. 5, lines 20-24, Gehman).

Regarding Claim 5, the combination of Gehman in view of Grimsrud discloses a method further comprises:

responsive to first non-legacy computer did not successfully execute the at least one operation, not synchronizing the master data (Fig. 3B step 96, the “no” option, Gehman).

Response to Arguments

Applicant's arguments filed 5/19/08 have been fully considered but they are not persuasive.

Applicant argues " it is not the role of the claims to teach one skilled in the art to reproduce the invention, but rather to define the legal metes and bounds of the invention".

Examiner disagrees. If the claims fail to show the invention reproduction, the claims would raise a 112 1st paragraph rejection as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. See MPEP 07-31-01.

Applicant argues with respect to claim 3 rejection the phrase at least one establishes a range of one or more, the phrase two or more further defines the range. That is at least one is broader than two or more.

Examiner disagrees. The phrase at least one, means it could be only one and it does not have to be more than one. On the other hand two or more means at least two it could be more than two but not less than two. therefore the rejection is maintained.

Applicant argues the rejection fails to disclose the “executing at least one operation on a copy of the master data in a second non-legacy computer”.

Examiner disagrees. Gehman at Col. 3, lines 44-46 disclose the teaching of executing at least one operation on a copy of the master data in a second non-legacy computer.

Applicant argues the Gehman dose not teach a determination of whether the first non-legacy computer successfully execute at least one operation.

Examiner disagrees. As shown in Fig. 3B the step 96 yes and no shows the determination on whether the execution was successful or not.

Applicant argues the applied art fails to disclose the newly submitted claims 16-22.

Examiner disagrees. Since the newly submitted claims were withdrawn from consideration by original presentation art is not applied in the office action.

Conclusion

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sana Al-Hashemi whose telephone number is 571-272-4013. The examiner can normally be reached on 8Am-4:30Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on 571-272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sana Al-Hashemi/
Primary Examiner, Art Unit 2164

